IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5987 OF 2005
IN
CRI.APPEAL NO. 857 OF 2005

1. Harinder Biltu Prasad
2. Mahesh Biltu Prasad
Resident of Goregaon, Mumbai
Presently lodged in
Kolhapur Central Prison ..Applicants

Vs.

State of Maharashtra ..Respondent

...

Mr.Neville Deboo i/b A.B.Bhoir
Advocate for Applicants
Mr.V.B.Konde-Deshmukh, A.P.P. for the State

...

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : OCTOBER 26, 2005

P.C.

1. Heard the learned advocate for the applicants and the learned A.P.P. for the State.

2. The applicants are seeking bail. The applicants have been convicted under Section 304-II r.w. 34 of IPC. As far as applicant no.2 Mahesh Prasad is concerned, it is not the prosecution case

that he has assaulted the deceased Basant. The learned advocate for the applicants states that applicant no.2 was on bail during the trial and he has not misused the liberty granted to him. This statement is not controverted on behalf of the prosecution.

3. Now I shall deal with the case of applicant no.1 Harinder Prasad. It is the prosecution case that there are three eye witnesses to the incident i.e. P.W.1 Santosh, P.W.2 Omprakash and P.W.3 Durgawati. As far as P.W.1 Santosh is concerned, he has stated in his evidence that he was not present on the spot and he was sleeping in the house. As far as P.W.2 Omprakash is concerned, the learned Sessions Judge has observed in para no.6 of the judgment that P.W.2 Omprakash personally had not seen the assault on Basant. Thus, from this it is clear that both P.W.1 Santosh and P.W.2 Omprakash are not eye witnesses. From the evidence of P.W.3 Durgawati, it does appear that she had witnessed the incident, however, her evidence is full of discrepancies. Moreover, as far as applicant no.1 is concerned, he has been in custody

since 26.10.2000 i.e. for a period of five years. In this view of the matter, I am inclined to grant bail to both the applicants.

4. Each of the applicants i.e. applicant no.1-Harinder Biltu Prasad and applicant no.2 Mahesh Biltu Prasad to be released on bail of Rs.25,000/- each with one or two sureties to make up that amount. The sureties shall be local sureties. The applicant no.2 Mahesh shall report to Goregaon Police Station on every alternate Sunday and applicant no.1 Harinder shall report to Goregaon Police Station on every Monday and Thursday during the pendency of the appeal.

5. Application is disposed of.

[V.K.TAHILRAMANI,J.]